IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 7448 of 2005
Date of decision : 29-8-2006

Hari Lal … Petitioner

Versus

Presiding Officer and another. … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Ramesh Goyat, Advocate,
for the petitioner

Mr. V.P.Malik, Advocate,
for respondent No.2.

…

ARVIND KUMAR, J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for modification of award dated 16.2.2004, Annexure P-1, to the extent vide which two-third of back-wages have been denied to him and also a writ of Mandamus for declaring that he is entitled to full-back wages.

It is the case of petitioner-workman that vide order dated 2.7.1998, he was appointed as Mali/Peon with the respondent-department and worked as such till 10.1.2000. Vide an oral order dated 11.1.2000 his services were terminated without any notice or compensation, when he demanded full salary for his services. Petitioner challenged the termination order by serving upon the respondent-department a demand notice. Later, the dispute was referred to the Labour Court for adjudication. Petitioner-workman did not file any claim statement and thus, his demand notice was treated as claim statement. Upon notice thereof, respondent-department in its written statement took up the plea that the workman was simply a part-time employee and thus, he is not entitled to full wages of a regular permanent employee. Replication was filed by the petitioner-workman to

the written statement denying the averments contained therein and reiterating the one in the demand notice-cum-claim statement.

In support of their respective case, evidence was led by the parties.

The learned Labour Court on appreciation of evidence led by the parties, held the termination of the workman illegal and ordered his reinstatement in service with continuity of service and back-wages to the extent of one-third of the pay as the workman was found to have not worked with the department from the date of demand notice. Accordingly, the reference was answered in favour of the workman and against the department. Feeling aggrieved by the part of award whereby one-third of the pay has been granted towards back-wages, the workman has filed the instant petition.

Upon notice of the writ petition, written statement has been filed by the respondent No.2-department. It has been stated therein that the petitioner-workman was not a full-time employee. It has further been stated that the workman did not lead any evidence before the Labour that he was not in gainful employment during the period of termination.

We have heard the learned counsel for the parties.

The argument of learned counsel for the petitioner that upon reinstatement, as a natural corollary, the petitioner-workman is entitled to full back-wages, is not sustainable. It is now settled proposition having regard to the provisions of Section 106 of the Evidence Act or the provisions analogous thereto that instead of employer, the plea is required to be raised by the workman that he was not gainfully employed during the period of termination. In other words, the initial burden is on the workman to show that he was not gainfully employed. However, in the instant case, no such plea has been raised by the workman. A bare perusal of the award also shows that the workman has not uttered even a single word to prove that he was not gainfully employed or remained idle.

In the case of G.M. Haryana Roadways v. Rudhan Singh, 2005 (5) SCC 59, although the termination of service of workman was held to have been made in violation of Section 25-F of the Act, a three Judge Bench of the Hon'ble Supreme Court, considering the length of service of a workman which was less than a year and having regard to his educational

qualification, denied back wages. The Hon'ble Supreme Court thus, made the following observations:-

> " A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

The decision in Rudhan Singh's case(supra) has been followed in U.P.State Brassware Corpn. Ltd. and another v. Uday Narain Pandey, (2006) 1 Supreme Court Cases 479 wherein payment of back wages was restricted to 25 per cent.

In Noida and another v. Hari Dutt, 2006 Supreme Court Cases (L&S) 1083, the Labour Court had directed payment of 50 per cent back wages which was raised to full back-wages by the High Court. The Hon'ble Supreme Court following the decision in Rudhan Singh's case(supra) set

aside the decision of the High Court and confirmed the award of the Labour Court. In the instant case as well, petitioner-workman had served with the department only for a short period of 1-1/2 year when his services were terminated. He was a part-time Mali. No cogent evidence has been led that he was not gainfully employed or remained idle throughout the interregnum period. Therefore, keeping in view the legal position referred to above, petitioner-workman has rightly been granted 1/3rd wages, which needs no interference.

For the reasons recorded above, the writ petition fails and is accordingly dismissed.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

August 29, 2006
JS